

1 HONORABLE MICHELLE L. PETERSON
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6 UNITED STATES DISTRICT COURT
 7 WESTERN DISTRICT OF WASHINGTON
 8 AT SEATTLE

9 BUNGIE, INC., a Delaware corporation,
 10 Plaintiff,

11 v.

12 JOSHUA FISHER, JACOB W. MAHURON
 13 A/K/A "PRAGMATICITAX," MATTHEW
 14 ABBOTT A/K/A "NOVA," JOSE
 15 DEJESUS AKA "DAVID HASTINGS"
 16 A/K/A "J3STER," TRAVERS RUTTEN
 17 A/K/A "TRAVERS7134," JESSE
 18 WATSON A/K/A "JESSEWATSON3944,"
 19 JOHN DOE NO. 1 A/K/A "CALC",
 20 ANDREW THORPE A/K/A "CYPHER,"
 21 RYAN POWER AKA "KHALEESI," JOHN
 22 DOE NO. 4 A/K/A "GOD," JOHN DOE
 23 NO. 5 A/K/A "C52YOU," JOHN DOE NO.
 24 6 A/K/A "LELABOWERS74," JOHN DOE
 25 NO. 7 A/K/A "FRAMEWORK," KICHING
 26 KANG A/K/A "SEQUEL," JOHN DOE
 27 NO. 9 A/K/A "INVITUS," DAVID
 BRINLEE A/K/A "SINISTER," JOHN DOE
 NO. 11 A/K/A "THEGUY," JOHN DOE
 NO. 12 A/K/A "BEATRED," JOHN DOE
 NO. 13 A/K/A "COMMUNITYMODS,"
 JOHN DOE NO. 14 A/K/A "PALACE,"
 JOHN DOE NO. 15 A/K/A
 "VINCENTPRICE," JOHN DOE NO. 16
 A/K/A "ESSWAN," JOHN DOE NO.
 17 A/K/A "ADMIRAL," JOHN DOE NO. 18
 A/K/A "TOMDICKHARRY," JOHN DOE
 NO. 19 A/K/A "ROB," JOHN DOE NO. 20
 A/K/A "STAYLOCKED," JOHN DOE NO.

Case No. 2:23-cv-01143-MLP

PLAINTIFF BUNGIE, INC.'S *EX PARTE*
 SEVENTH MOTION FOR AN
 EXTENSION OF THE SERVICE
 DEADLINE UNDER RULE 4(m)

NOTE ON MOTION CALENDAR:
 May 13, 2025

1 21 A/K/A "FIVE-STAR," JOHN DOE NO.
 2 22 A/K/A "HORROR," JOHN DOE NO. 23
 3 A/K/A ELITECHEATZ.CO, JOHN DOE
 4 NO. 24 A/K/A MIHAI LUCIAN, JOHN
 5 DOE NO. 25 A/K/A NATHAN BERNARD,
 6 A/K/A "DOVE," JOHN DOE NO. 26
 7 A/K/A "BLACKMAMBA," JOHN DOE
 8 NO. 27 A/K/A "BILLNYE," JOHN DOE
 9 NO. 28 A/K/A "BANEK192," JOHN DOE
 10 NO. 29 A/K/A SHOPPY ECOMMERCE
 11 LTD, JOHN DOE NO. 30 A/K/A FINN
 12 GRIMPE A/K/A "FINNDEV," AND JOHN
 13 DOES NO. 31-50,

14 Defendants.

15 Plaintiff Bungie, Inc. hereby moves for an additional 60-day extension to the Rule 4(m)
 16 deadline to permit Bungie to complete the process of identifying, locating, and then serving any
 17 remaining U.S. Defendants.

18 I. INTRODUCTION

19 Bungie is the owner and developer of the massive multiplayer online video game shooter
 20 *Destiny 2*. Defendants develop, sell, market, and support cheat software targeted to attack
 21 *Destiny 2*. *See generally* Dkt. 54. Recognizing that Defendants have deliberately obscured their
 22 identities, the Court granted Bungie's requests for third party discovery on November 29, 2023,
 23 April 24, 2024, and September 16, 2024. *See* Dkts. 27, 51, 68. Bungie has served every subpoena
 24 permitted under those Orders. Additionally, Bungie amended its complaint to encompass what it
 25 had discovered. *See* Dkts. 53, 54.

26 Via third-party discovery, Bungie has aggressively pursued efforts to complete the
 27 process of identifying, locating, and serving the Defendants. After much negotiation with the
 28 subpoena recipients and the resulting delay therefrom, Bungie has finally obtained each
 29 production from the final round of subpoenas it sent out. *See generally* Declaration of Dylan
 30 Schmeyer ¶¶ 2-7.

31 Bungie has now either served or defaulted all U.S. Defendants known to it. It also has
 32 begun the process of serving Defendants located outside the United States, either through Hague
 33 agreements or other methods.

1 service or through a forthcoming motion for alternative service. Bungie's counsel is preparing
 2 for two arbitration hearings in other matters from May 19th to May 22nd and June 29th to July
 3 2nd. But following the conclusion of those two arbitrations, Bungie will be able to finish
 4 analyzing the final productions it has received and finalize the list of Defendants for whom
 5 Hague and alternative service will be necessary, and as soon as it can make its final
 6 identifications, that motion can be completed and filed. *Id.* at ¶ 13. Bungie does not believe these
 7 final efforts will identify any further U.S. Defendants implicating Rule 4(m) but makes this
 8 Motion just in case it does.

9 Bungie seeks an extension of 60 days from the issuance of the Court's Order on this
 10 Motion to finalize its service list and pending settlement negotiations, and its upcoming motions
 11 to amend the complaint, make alternative service, and for default judgments.

12 II. FACTUAL BACKGROUND

13 On October 27, 2023, Bungie filed a motion seeking third-party discovery to unmask
 14 anonymous defendants for service of process. Dkt. 24. The Court granted that motion in part on
 15 November 29, 2023. Dkt. 27. Eighteen subpoenas were served under that Order. Dkt. 29 at ¶ 10.
 16 On April 9, 2024, Bungie filed a second motion seeking further third-party discovery, which the
 17 Court granted on April 24th. *See* Dkts. 40, 51. Six subpoenas were served under that Order.
 18 Schmeyer Declaration ¶ 7. Bungie filed a third motion seeking a final round of third-party
 19 discovery on August 23rd, which was granted on September 16th. Dkts. 58, 67. Six subpoenas
 20 were eventually served under that Order, although due to an inadvertent error by the process
 21 server, three subpoenas were served much later than anticipated, and a follow-up subpoena had
 22 to be served per the production from Payward. Schmeyer Declaration ¶¶ 6-7. Bungie's analysis
 23 of the Payward subpoena production, and thus Bungie's ability to identify its follow-up needs,
 24 was substantially delayed by the now withdrawn motion to quash, *see* Dkts. 77, 95, which caused
 25 Payward to withhold the production until resolution, Dkt. 102 at ¶ 6. After significant additional
 26 effort, Bungie was able to procure its final outstanding productions without need for judicial
 27 intervention. Schmeyer Declaration ¶¶ 5-7. However, the final production was not received until

1 April 9. *Id.* at ¶ 6.

2 Bungie sent Rule 4 waiver requests to all named Defendants it has identified and pinned
 3 to a domicile, and one it has identified with reliable communication methods, with its Amended
 4 Complaint. *Id.* at ¶ 8. Bungie received only two favorable responses. *Id.* Therefore, Bungie
 5 served all U.S. Defendants whom it has identified to date and who have not agreed to waive
 6 service. *Id.* at ¶ 9. Two of those Defendants have since defaulted. Dkts. 98, 109. Another two
 7 have been dismissed. Dkts. 100, 110.

8 Bungie, final productions in hand, is analyzing them and making any final identifications
 9 so its motion for alternative service is sufficiently targeted. It is also trying to confirm whether
 10 there are any more U.S. Defendants unknown to it, though that currently appears unlikely. It is
 11 time consuming and meticulous work, but Bungie is analyzing the productions it has received in
 12 the last 90 days and is cross-referencing them against the data it already has. Schmeyer
 13 Declaration ¶¶ 2, 4-7, 10. Bungie requires more time to complete this stage of its investigation so
 14 that it may finalize its alternative service needs and amend the complaint with any newly
 15 identified Doe defendants. *Id.* at ¶ 13.

16 Bungie therefore submits that there is good cause to extend the Rule 4(m) deadline,
 17 currently set at May 14th, by a further 60 days to finish analyzing the data available to it and to
 18 finalize its forthcoming alternative service and amendment requests. Because all known U.S.
 19 Defendants have been served, this extension request to the Rule 4(m) deadline applies only to
 20 those unidentified Defendants who may yet turn out yet to be located in the U.S., in the event
 21 there are any such Defendants left.

22 III. LEGAL ARGUMENT

23 Under Rule 4(m), a court “must extend the time for service for an appropriate period”
 24 where the plaintiff shows good cause for an inability to serve a defendant within 90 days of filing
 25 the complaint. FED. R. CIV. P. 4(m). *See also Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir.
 26 2007) (“Rule 4(m) . . . requires a district court to grant an extension of time when the plaintiff
 27 shows good cause for the delay.”) (emphasis omitted). A showing of good cause may involve

1 various factors, such as the lack of prejudice to defendant and the significant prejudice to
 2 plaintiff if the extension were not granted and the complaint was dismissed, and the defendant's
 3 receipt of actual notice of the lawsuit. *See, e.g., Efaw*, 473 F.3d at 1041; *Madrid v. Adkins*,
 4 No. C19-1710 JLR-TLF, 2020 U.S. Dist. LEXIS 173154, *6, 8 (W.D. Wash. Aug. 20, 2020),
 5 *report & recommendation adopted by* 2020 U.S. Dist. LEXIS 186681 (W.D. Wash. Oct. 6,
 6 2020); *Hoefer v. Apple Wash. LLC*, No. C17-1369 RAJ, 2018 U.S. Dist. LEXIS 216863, *5-6
 7 (W.D. Wash. Dec. 27, 2018). Upon a showing of good cause for the lack of service, the district
 8 court must extend the time period for service. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001).
 9 Even absent a showing of good cause, the court still has discretion to extend the time period. *Id.*
 10 (*citing Petrucelli v. Boehringer & Ratzinger*, GMBH, 46 F.3d 1298, 1305 (3d Cir.1995)).

11 The Ninth Circuit has also concluded that Rule 4's timing requirement for service is
 12 "inapplicable to service in a foreign country[.]" *Lucas v. Natoli*, 936 F.2d 432 (9th Cir. 1991)
 13 (per curiam). Thus, where it appears defendants may need to be served in foreign countries, the
 14 time limit for service in Rule 4(m) does not apply. *Amazon.com Inc. v. Awns*, No. C22-402-MLP,
 15 2022 U.S. Dist. LEXIS 185807, *2 (W.D. Wash. Oct. 11, 2022). However, "[d]espite the lack of
 16 an express time limit, Rule 4(m) does not preclude the court from setting a reasonable time limit
 17 for service in a foreign country to properly manage a civil case." *Id.* (internal quotation marks
 18 omitted).

19 Bungie needs to finish determining which of the remaining unidentified Defendants are
 20 U.S. residents and which are domiciled abroad. Dkt. 56 at ¶ 4. Bungie formally served all of the
 21 U.S. Defendants it has been able to locate and has had one Rule 4 waiver returned. Dkt. 99;
 22 Schmeyer Declaration ¶¶ 8-9. To the extent that any of the remaining unidentified Defendants
 23 are residents of a foreign country, Bungie will pursue serving them, once they are identified, in
 24 the same manner as it is pursuing foreign Defendants it has already identified and located. *Id.*

25 Bungie has good cause for having not yet served any remaining U.S. Defendants:
 26 Namely, that Bungie doesn't know who they are yet, whether they are in fact in the United States
 27 or a foreign country, the address of their primary residence, or other information sufficient to

1 affect service. Although Bungie has issued three waves of subpoenas to third parties to identify,
 2 locate and affect service on the unidentified Defendants, some remain unidentified.¹ Bungie is
 3 working on following its final leads via the productions from the final subpoenas. More time is
 4 therefore needed to identify and serve these unidentified Defendants, whether they are foreign or
 5 domestic.

6 There is no undue prejudice to the unidentified Defendants if such an extension were
 7 granted. The extension is necessary to allow time for Bungie to (1) either identify Defendants so
 8 they may be served or exhaust its efforts to do so, and (2) move for alternative service of the
 9 identified Defendants that Bungie is ultimately unable to obtain a physical address for. Bungie,
 10 on the other hand, would be significantly prejudiced, as the unidentified Defendants could
 11 continue their tortious conduct (and potentially add new or additional layers of anonymity to
 12 avoid identification) while Bungie continued to identify them, functionally rewarding them for
 13 obfuscating their identities. This delay would not negatively impact the orderly progress of the
 14 case. The request is solely to allow Bungie time to complete its efforts to identify and locate the
 15 remaining unidentified Defendants, or so it can determine which Defendants it will need to seek
 16 alternative service for. Further, the reason for the delay is largely, if not entirely, out of Bungie's
 17 control. Any delay is due in significant part to the Defendants' ongoing attempts to conceal their
 18 identities. *See, e.g.*, Dkt. 25 at ¶¶ 2-13. The potential but heretofore unknown foreign residence
 19 of many unidentified Defendants has further complicated and delayed efforts to identify, locate,
 20 and serve them. Finally, Bungie has acted diligently and in good faith in promptly pursuing
 21 multiple avenues of discovery and investigation – including via 30 subpoenas – to identify,
 22 name, and serve Defendants. *See, e.g.*, *Vanleeuwen v. Keyuan Petrochemicals, Inc.*, No. CV 11-
 23 9495 PSG (JCGx), 2013 U.S. Dist. LEXIS 121976, *13-14 (C.D. Cal. Aug. 26, 2013) (difficulty
 24 in locating defendant and plaintiffs' attempts to locate defendant through discovery supported the
 25

26 ¹ Since filing its Amended Complaint, Bungie has been successful in identifying and locating
 27 some of the Doe Defendants and has requested issuance of summons to serve those Defendants.
See Dkts. 61-64, 71-72, 104-105.

1 conclusion that plaintiffs acted in good faith).

2 Bungie's filing of requests for summons, requests for entry of default, proofs of service
 3 and Rule 4 waivers, and voluntary dismissals, as well as Bungie's ongoing pursuit of a resolution
 4 with some Defendants, is indicative of its continuing progress in its investigation and this case.
 5 Bungie is making good use of all the time the Court grants it. Additionally, while Bungie's
 6 counsel continues to diligently analyze the final productions received in response to its last round
 7 of subpoenas, counsel also must prepare for two arbitrations in other matters from May 19th to
 8 May 22nd and June 29th to July 2nd.

9 If the Court concludes that this is not good cause requiring an extension under the
 10 mandatory language of Rule 4(m), it should still exercise its discretion and grant the extension in
 11 the interest of judicial efficiency. Bungie has invested considerable time and resources into
 12 determining the obfuscated identities of the Defendants, to considerable success – Bungie has
 13 identified a significant number. *See* Schmeyer Declaration ¶ 8. Bungie has actively pursued the
 14 permitted third-party discovery but requires time to complete its analysis of the final productions
 15 it recently received to make final decisions as to service. These productions will allow it to either
 16 identify and locate the unidentified Defendants for traditional service or to crystallize its
 17 alternative service needs. Absent a grant of more time, it is conceivable that additional U.S.
 18 Defendants could be dismissed from this suit, without prejudice, for lack of service. Bungie's
 19 efforts to identify them would not cease, however, and once they were identified, Bungie would
 20 sue them again once their names and addresses were discovered. Allowing more time for Bungie
 21 to complete the limited third-party discovery it has sought now, so this can be accomplished on a
 22 reasonable timeline without these additional steps, is the most efficient path.

23 IV. CONCLUSION

24 Bungie therefore respectfully requests that the Court extend Bungie's deadline to serve
 25 the remaining U.S. Defendants, if any, by 60 days from the date of the order on this Motion.

26 //

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1 Dated this 13th day of May, 2025.

2 KAMERMAN, UNCYK, SONIKER &
3 KLEIN, P.C.

4 By: s/ Dylan Schmeyer

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Respectfully submitted,

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10 **WORD LIMIT CERTIFICATION**

11 I certify that this memorandum contains 2,085 words, in compliance with the Local Civil
12 Rules.

13 By: s/ Stacia N. Lay

14 Stacia N. Lay, WSBA #30594